

**Fiscal Year 2003
Statutory Review of Restrictions on
Directly Contacting Taxpayers**

June 2003

Reference Number: 2003-40-131

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

June 16, 2003

MEMORANDUM FOR COMMISSIONER EVERSON

Gordon C. Milbourn

FROM: Gordon C. Milbourn III
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2003 Statutory Review of
Restrictions on Directly Contacting Taxpayers
(Audit # 200340002)

This report presents the results of our review to determine if the Internal Revenue Service (IRS) is in compliance with legal guidelines dealing with directly contacting taxpayers and their representatives set forth in Internal Revenue Code Section (I.R.C. §) 7521(b)(2) and (c) (1986).¹

In summary, we could not determine if the IRS fully complied with I.R.C. § 7521(b)(2) and (c) requirements when directly contacting taxpayers and their representatives. This is the fifth year in which we have reported our inability to give an opinion on the IRS' compliance with the restrictions of I.R.C § 7521(b)(2) and (c).

The Treasury Inspector General for Tax Administration is required under I.R.C. § 7803(d)(1)(A)(ii) (Supp. IV 1998) to annually evaluate the IRS' compliance with the direct contact provisions of the law. IRS management information systems do not separately record or monitor direct contact requirements, and the Congress has not explicitly required the IRS to do so. Even though the IRS does not monitor its employees' compliance with the direct contact provisions, the IRS has existing Internal Revenue Manual citations that adequately address the requirements. Furthermore, we

¹ I.R.C., as amended by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21, the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002), and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

do not recommend the creation of a separate tracking system. Accordingly, we are making no recommendations in this report.

Management's Response: IRS management stated again that they have no plans to create a separate tracking system to monitor compliance with the direct contact provisions. IRS management noted they took correct administrative actions when two employees were identified as having violated the direct contact provisions. The IRS' response stated that because of their compliance with the statute and the resources expended to address this issue, they were asking us to work with them to have this mandatory audit requirement reconsidered. Management's complete response to the draft report is included as Appendix IV.

Copies of this report are also being sent to the IRS managers who are affected by the report results. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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Fiscal Year 2003 Statutory Review of Restrictions on Directly Contacting Taxpayers

Background

The Taxpayer Bill of Rights¹ created a number of safeguards to protect taxpayers being interviewed by an Internal Revenue Service (IRS) employee as part of an examination or collection action. Specifically, IRS employees are required to:

- Stop a taxpayer interview (unless the interview is required by court order) whenever a taxpayer requests to consult with a representative (someone who is permitted to represent taxpayers before the IRS).
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of an examination or collection action.

The provisions were created to protect the rights of taxpayers who are interviewed by an IRS employee as part of an examination or collection action. A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

The Treasury Inspector General for Tax Administration (TIGTA) is required under Internal Revenue Code Section (I.R.C. §) 7803(d)(1)(A)(ii) (Supp. IV 1998)² to annually evaluate the IRS' compliance with the direct contact provisions of I.R.C. § 7521(b)(2) and (c) (1986).

This review was conducted in the IRS National Headquarters, the Small Business/Self-Employed Division, and the Office of the National Taxpayer Advocate, during the period February through April 2003. The audit was conducted in accordance with *Government Auditing*

¹ Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647, 102 Stat. 3731 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).

² I.R.C., as amended by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21, the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002), and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

**Compliance With Statutory
Requirements for Restrictions on
Directly Contacting Taxpayers
Cannot Be Determined**

Standards. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

We could not determine whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. Neither the IRS nor TIGTA could readily identify cases where the taxpayer requested a representative or the IRS contacted the taxpayer directly and bypassed the representative.

Current IRS management information systems do not separately record or monitor cases where taxpayers had requested to consult with a representative or where IRS employees bypassed taxpayer representatives and contacted the taxpayers directly. In addition, there is no legal requirement for the IRS to develop a separate system that records or monitors cases involving these two procedures. Even though the IRS does not monitor its employees' compliance with the direct contact provisions, the IRS has existing Internal Revenue Manual citations that adequately address both procedures.

Taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly are tracked by the TIGTA Office of Investigations (OI). TIGTA OI received and closed five direct contact complaints between March 2002 and March 2003. Our review of the complaint results showed three of five IRS employees did not violate the direct contact provisions of the I.R.C. TIGTA OI referred two of five complaints to the IRS. TIGTA OI and IRS determined two IRS employees violated the direct contact provisions, and IRS has taken administrative action.

We do not recommend the creation of a separate tracking system and are making no recommendations in this report. This is the fifth year in which we have reported our inability to give an opinion on the IRS' compliance with the I.R.C. restrictions on direct contact.

Management's Response: IRS management has no plans to create a separate tracking system to monitor compliance with the direct contact provisions. IRS management noted they took correct administrative actions when two employees were identified as having violated the direct

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contact provisions. The IRS' response stated that because of their compliance with the statute and the resources expended to address this issue, they were asking us to work with them to have this mandatory audit requirement reconsidered. Management's complete response to the draft report is included as Appendix IV.

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine if the Internal Revenue Service (IRS) is in compliance with legal guidelines dealing with directly contacting taxpayers and their representatives set forth in Internal Revenue Code Section (I.R.C. §) 7521(b)(2) and (c) (1986).¹ To accomplish this objective, we:

- I. Interviewed an executive in the Small Business/Self-Employed (SB/SE) Division to determine if the IRS has implemented or plans to implement a system to track cases where taxpayers have requested to consult with a representative or where an IRS employee bypassed a representative.
- II. Interviewed an SB/SE Division analyst and researched the Internal Revenue Manual to determine whether instructions have been established to ensure IRS employees comply with the direct contact provisions of the law.
- III. Interviewed various IRS and Treasury Inspector General for Tax Administration (TIGTA) personnel responsible for the Taxpayer Advocate Management Information System (TAMIS),² the Executive Control Management System (ECMS),³ and the Performance and Results Information System (PARIS)⁴ to determine if there is a system or plans for a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
 - A. Identified five direct contact complaints received and closed by the TIGTA Office of Investigations during the period March 2002 to March 2003.
 - B. Obtained and reviewed the complaint files to determine their validity and what actions were taken by the IRS as a result of the complaints.

¹ I.R.C., *as amended* by the Trade Act of 2002, Pub. L. No. 107-210, 116 Stat. 933, the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21, the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2002), and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

² The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

³ The ECMS is an application used by the IRS to assign, control, and track information and correspondence.

⁴ The PARIS is a management information system that provides the TIGTA the ability to manage and account for the thousands of complaints received and investigations initiated annually.

Appendix II

Major Contributors to This Report

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Augusta R. Cook, Director

Paula W. Johnson, Audit Manager

Lynn Faulkner, Senior Auditor

John Hawkins, Senior Auditor

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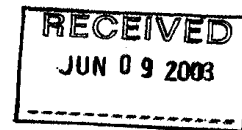
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Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224



JUN - 5 2003

MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR TAX
ADMINISTRATION

FROM: Dale F. Hart *Dale Hart by AS, i, r*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2003 Statutory Review
of Restrictions on Directly Contacting Taxpayers
(Audit # 200340002)

I have reviewed your report and am pleased to note that it indicates our internal guidelines established to address conformance with Internal Revenue Code Section 7521(b)(2) and (c) are adequate. Although we do not have a separate tracking system to enable you to give an opinion, your report shows we took the correct administrative actions when two employees were identified as having violated this provision.

It is important to note, from an historical perspective, that your prior report dated September 2002 (Reference Number: 2002-40-177), stated your review of 11 direct contact complaints received and closed by TIGTA between November 1999 and April 2002 showed that none of the IRS employees violated the direct contact provisions of this section.

As noted last year, we again have no plans to create a separate tracking system to monitor compliance with the direct contact provisions. We realize this is a mandatory audit, however, in light of our clear conformance with the statute and the amount of resources expended, we would ask that you work with us to have this requirement reconsidered.

If you have any questions or need additional information, please contact me or Joseph R. Brimacombe, Deputy Director, Compliance Policy, at (202) 283-2200.